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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,989	01/04/2005	Hajime Ide	030673-191	3211

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EXAMINER	
ALI, MOHAMMAD M	

ART UNIT	PAPER NUMBER
3744	

NOTIFICATION DATE	DELIVERY MODE
07/14/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary	Application No.	Applicant(s)	
	10/519,989	IDE, HAJIME	
	Examiner	Art Unit	
	MOHAMMAD M. ALI	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 May 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 6-11, 17 and 18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Junichi et al (JP 2000-346524 A) Junichi et al disclose a wine storage apparatus (1) comprising a wine storage compartment (10/11/12) for storing wine, and a temperature control device (20/21/22) for controlling a temperature of the wine storage compartment; a target temperature within the limits of 5 to 20 degree C. (See Para [0017] of the enclosed translation and original disclosure in Japanese language Para [0026] for degree C portion). Junichi et al disclose the invention substantially as claimed as stated above including the control device repeatedly raises and lowers the temperature between the temperature limits as mentioned above having a target temperature within the limits. Alternatively, for a cooling device a target or predetermined temperature is the basic and inherent and to attain or remain around the target temperature the cooling cycles repeats by on when

the temperature reaches below the target or preset temperature and it goes off when it exceeds the preset or target temperature (this feature is inherent or obvious for a any cooling device while controlling a temperature for fluctuation of temperature for raising the temperature a preset point and for lowering the temperature a preset point and this is inherently accompanied by a preset cycle of operation, a preset band that means a defined preset temperature range and its allowance of variation). However, on the other hand separate disclosing a preset cycle, a preset temperature band and a preset variation pattern is an obvious choice of an individual skilled in the art since same feature is inherently present in a temperature control system.

Regarding claim 6, the control of temperature by increasing or lowering occurs in either of linear or curvilinear or stepwise.

Regarding claim 7 Junichi also controls a predetermined humidity control with the help of water trays (70) evaporator (33) and controller (20/21/22). Regarding claim 8, the Applicant admits that it is commonly believed that wine is ideally stored at a constant temperature of 13 degree C to 14 degree C and a constant humidity of about 65% (see first Para of background).

Regarding claim 9, the control system of Junichi et al., is capable of doing so. Regarding claim 10, claim 8 is being controlled at a constant temperature to have constant humidity of 65%.

Regarding claim 11, Junichi et al., disclose separate chambers for white wine and red wine and aging wine in three different chambers at different specified temperatures. See Fig. 1 and the enclosed translation.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-5, 12, 13, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Junichi et al., in view of Kawai et al., (US 6,705,098 B2). Junichi et al., disclose the invention substantially as claimed as stated above except a ban and a temperature control up to 25 degree C. Kawai et al., teach the control of temperature gradually changed by steps of predetermined amount/band of 0.5 degree C in every predetermined amount of time so as to gradually change from the previous control preset temperature (25 degree C. in this example) to the control preset temperature to be set (23 degree C. in this example at this time. See column 7, lines 6-11. Therefore, in view of the teachings of Kawai et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wine storage apparatus of Junichi et al., in view of Kawai et al., such that a temperature control band could be provided in order to control the temperature of the Junichi et al., with any desired temperature control band to obtain a predetermined temperature range 23 to 25 degree range. Regarding claim 5 having a temperature range of 22 degree C is obvious equivalent next temperature 23 degree C as taught by Kawai et al. as explained above. Regarding choosing a ban of 4 degree or 8 degree C, the teaching of Kawai et al., using

a band of 0.5 degree C would be recognized by an ordinary skill of art and the individual skilled in the art would be able to consider any suitable band limit to conveniently implement the teaching of Kawai et al.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Junichi et al in view of Ishi et al (US 4,678,603) and Forino (US 4,842,869). Junichi et al disclose the invention substantially as claimed as stated above except a cycle of 4 month and one year cycle period. Ishi et al teach the use of a maturation period of more than 3 months which is obviously equivalent to 4 months, Forino teach the use of fermentation period of 3 to 6 months for the alcoholic beverage by cooling and heating procedure in order to get a tasty alcoholic food. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wine storage apparatus of Junichi et al in view of Ishi and Forino such that a fermentation or maturation cycle of about for and 12 months could be provided in order to provide better test to the alcoholic beverage. .

Response to Arguments

Applicant's arguments filed 05/19/09 have been fully considered but they are not persuasive. The Applicant argues that Junichi does not disclose, and would not have rendered obvious, in combination with other claimed features, a temperature control device that repeatedly raises and lowers the target temperature in the wine storage compartment in accordance with the claimed presets, as recited in independent claim 1 and similarly recited in independent claims 17 and 18.

The Examiner disagrees. It is a common knowledge that there no absolute device which can maintain a preset temperature without fluctuating or crossing the boundary of the preset range. There are lot of unusual unforeseen causes which makes the device to fluctuate range of the temperature and cross the boundary, go up and down the preset range. It is the function of the device maintain the preset value to an optimum value. Junichi has a normal fluctuating range from 5 to 20 degree C to maintain its preset range of temperature. It confirms that Junichi's device is functionally capable to fluctuate and accordingly fluctuating between a high (20 degree C) and low (5 degree C) range of temperature. Therefore, it is evident that Junichi's device is capable to fluctuate beyond 20 degree C and below 5 degree C and that very function is functioning Junichi's device to maintain its preset range from 5 to 20 degree C because crossing the limit of a preset range is the functional recitation of a device and that function is being impart by the device of Junichi.

Therefore, The Applicant's argument that Junichi does not disclose, and would not have rendered obvious, in combination with other claimed features, a temperature control device that repeatedly raises and lowers the target temperature in the wine storage compartment in accordance with the claimed presets, as recited in independent claim 1 and similarly recited in independent claims 17 and 18 is not correct.

Against inherency the Applicant cites that with respect to (1), to establish inherency, the extrinsic evidence must make
clear that the missing descriptive matter is necessarily present in the thing described in the reference. Inherency, however, may not be established by probabilities or

possibilities and the mere fact that a certain thing *may* result from a given set of circumstances is not sufficient to establish the inherency of that result (MPEP {}2112 IV). That is, there can be no speculation or mere possibilities involved in a holding of inherency. What is alleged to be inherent must necessarily occur. Here, Junichi's temperature regulating mechanisms simply 20-22 *maintain* the predetermined temperature value ("target temperature") and may adjust the temperature so that the temperature *returns* to the predetermined temperature value, as discussed above. The temperature regulating mechanisms 20-22 do not repeatedly raise and lower *the predetermined temperature value* ("target temperature") in the storing chambers 10- 12.

The Examiner disagrees. There is no question of probabilities or possibilities in establishing the fluctuating variation of temperature to maintain a preset temperature in Junichi's device. Junichi clearly discloses that to main a preset temperature between 5 to 20 degree C, his device is capable of repeatedly fluctuating between 5 to 20 degree C to maintain a preset temperature. Therefore the above argument of the applicant is not based on facts.

The Applicant further cites that obviousness Under 35 U.S.C. §103(a) in view of *KSR International Co. v. Teleflex Inc.,* 82 USPQ2d 1385 (2007). The Guidelines state that the Examiner should clearly articulate ~ the claimed invention would have been obvious. For example, the Supreme Court in *KSR* held that the Examiner "must [provide] some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" *(KSR,* 82 USPQ2d 1385, 1396 (2007)). In this case, it is not at all

apparent why the stated modification would have been an "obvious choice" to an ordinarily skilled artisan, especially in view of the fact that it was common knowledge to those skilled in the art of wine storing and aging to store wine at a *constant* temperature to avoid spoilage. Thus, the Office Action fails to explain, with any articulated reasoning or rational underpinning, why it would have been obvious to modify the temperature regulating mechanisms 20-22 of Junichi to repeatedly raise and lower the *predetermined temperature value* in the storing chambers 10-12. Simply because something could have been modified and a person of ordinary skill was capable of making the modification does not mean it would have been obvious to do so. Thus, there is inadequate evidence supporting the conclusion that it would have been obvious to modify the temperature regulating mechanisms 20-22 of Junichi to repeatedly raise and lower the *predetermined temperature value* in the storing chambers 10-12, as recited in independent Claims 1, 17 and 18.

The examiner disagrees. The Examiner providing articulated reasoning with sufficient rational support for the legitimate justification for the obviousness rejection as explained in the rejections. The Applicant misunderstood the implication of repeated raising and lowering of a preset range of temperature and finds some unfounded argument which not acceptable. The Examiner already stated above that repeated raising and lowering of temperature by temperature control device to maintain a preset temperature is the functional recitation of the function of the device. The temperature control device of Junichi is equally capable of maintaining a preset or targeted

temperature by repeated raising and lowering the temperature and therefore, the argument of the Applicant is not acceptable.

The Applicant further argues that one skilled in the art would not have been inclined to repeatedly vary the temperature of Junichi's storage unit 1, as doing so would have resulted in spoilage of the wine based on the knowledge had by those skilled in the art at the time of invention.

The examiner disagrees. Junichi discloses that the temperature at the drinker time of wine differs from maturing temperature, for example 5-10 ** is optimal for white wine, 16-20 for red wine. See Para [0004]. Therefore, variation in temperature is permissible in for a drinkers convenient. The remarks given by the Applicant that repeated raising and lowering the temperature would have resulted in spoilage of wine is unfounded and there is no basis on it.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The Examiner did not include any knowledge from the Applicant's disclosure and thus there is no fault in Examiner's obviousness type rejections.

The Applicant further argues that there is no evidence of record that Junichi discloses controlling the temperature gradations within a preset temperature band, as recited in independent claim 18.

The examiner disagrees. Junichi discloses a targeted temperature range 5 to 30 degree C which the Examiner considers the temperature range. Similarly, Junichi discloses temperature different range/band for white and red wines. See Para [0004].

Therefore, the above argument of the Applicant is not acceptable.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MOHAMMAD M. ALI whose telephone number is (571)272-4806. The examiner can normally be reached on maxiflex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl J. Tyler can be reached on 571-272-4808. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mohammad M Ali/
Primary Examiner, Art Unit 3744